

Application No. 10/615,681
Amendment dated August 9, 2007
Reply to Office Action mailed February 9, 2007

Amendments to the Drawings:

The attached sheets of drawings include changes to Figures 1 and 4. These sheets replace the original sheets including Figures 1, 4, and 5. Applicant has amended Figures 1 and 4 as follows:

- In amended Figure 1, reference numeral 106 has been removed.
- In amended Figure 4, reference numeral 108 has been removed

Attachments: Replacement sheets (2).

REMARKS

In the Office Action mailed February 9, 2007, the Examiner objected to the application as follows:

- The Information Disclosure Statement (“IDS”) filed October 16, 2003 was objected to for allegedly failing to comply with 37 C.F.R. § 1.98(a)(2).
- The drawings were objected to for various informalities.

Also in the Office Action, the Examiner rejected claims 1-17 as follows:

- Claim 2 was rejected under 35 U.S.C. § 112, second paragraph, as allegedly indefinite.
- Claims 1-15 were rejected under 35 U.S.C. § 103(a), as allegedly obvious over U.S. Patent No. 5,932,336 to Allen et al. (the “Allen patent”), in view of U.S. Patent No. 6,748,677 to Briant et al. (the “Briant patent”).
- Claims 1, 3-7, and 10 were rejected under 35 U.S.C. § 103(a), as allegedly obvious over the Allen patent, in view of U.S. Patent No. 6,748,677 to the Briant patent, and in further view of U.S. Patent No. 5,869,591 to McKay et al. (the “McKay patent”).
- Claims 16 and 17 were rejected under 35 U.S.C. § 103(a), as allegedly obvious over the Allen patent, in view of the Briant patent, and in further view of U.S. Patent No. 5,771,605 to Safdie (the “Safdie patent”).
- Claim 2 was rejected under 35 U.S.C. § 103(a), as allegedly obvious over the Allen patent, in view of the Briant patent, in further view of the McKay patent, and in further view of U.S. Patent No. 5,938,878 to Hurley et al. (the “Hurley patent”).
- Claims 8 and 9 were rejected under 35 U.S.C. § 103(a), as allegedly obvious over the Allen patent, in view of the Briant patent, in further view of the McKay patent, and in further view of the Safdie patent.

Applicants respectfully request reconsideration of this application in view of the foregoing amendments to the specification, claims, and drawings and the following comments.

I. The Objection to the Information Disclosure Statement

As mentioned above, the Examiner objected to IDS filed October 16, 2003, for allegedly failing to comply with 37 C.F.R. § 1.98(a)(2). More specifically, the Examiner requested legible copies of the non-patent literature publications cited in the IDS.

In response, Applicants submit with this Amendment legible copies of the four non-patent literature publications that were previously cited in the IDS. The objection to the IDS should now be withdrawn.

II. The Objections to the Figures

As mentioned above, the drawings were objected to because (1) reference numerals 104, 106 were both used to designate the outsole in Figure 1; (2) reference numerals 104 and 108 were both used to designate the outsole in Figure 4, (3) reference numerals 100 and 110 do not appear in Figure 7; and (4) reference numeral 104 does not appear in Figure 8.

In response, Applicants have removed reference numerals 106 and 108 from Figure 1 and Figure 4, respectively. In addition, Applicants have removed reference numerals 100 and 110 from paragraph [0055], thereby removing any suggestion that these reference numerals are shown in Figure 7. Finally, Applicants have amended paragraph [0058] to clarify that reference numeral 104 is shown in Figure 4. For all of these reasons, the Examiner's objections to the drawings should now be withdrawn.

III. § 112 Rejection

As mentioned above, claim 2 was rejected under 35 U.S.C. § 112, second paragraph, as allegedly indefinite. In response, Applicants have canceled claim 2, without prejudice.

**IV. § 103(a) Rejection of Claims 1-15 Based on the Allen Patent
In View of the Briant Patent**

As mentioned above, independent claims 1 and 11, and their respective dependent claims 3-10 and 12-15, were rejected under 35 U.S.C. § 103(a), as allegedly obvious over the Allen patent in view of the Briant patent.

A. Independent Claim 1 and its Dependent Claims 3-10

Independent claim 1, and its dependent claims 3-10, generally define an article of footwear including an upper and a sole, wherein the sole has an outsole for directly contacting a ground surface, and further including at least one element compression molded with the outsole. The at least one element is formed from a first material comprising at least 45% ethylene vinyl acetate, approximately 30% polyene elastomer, and approximately 20% synthetic rubber. In addition, the outsole includes a second material that is compatible for compression molding with the at least one element. This second material is less hard and less dense than the first material.

The Allen patent discloses a golf shoe incorporating a spike socket spine frame system embedded in the outsole and extending throughout the shoe sole, for receiving all of the spike receptacles. The spine frame is made of a material that is stiffer than the outsole material, but that material lacks any ethylene vinyl acetate. In fact, the Allen patent fails to disclose the use of any material comprising ethylene vinyl acetate.

The Briant patent fails to make up for this deficiency. The Briant patent discloses a sole having at least one stud that can be releasably mounted within a receptacle by inserting a fastening projection of the stud into the receptacle. The fastening projection includes a first locking member, and the receptacle includes a flexible wall having a second locking member. The flexible wall is deflected when the fastening projection is inserted into the receptacle until the first and the second locking members engage. As noted by the Examiner, the Briant patent teaches that “the various components of the detachable cleat system can be manufactured from any suitable polymeric material or combination of polymeric materials Suitable materials include: . . . ethylene vinyl acetate (EVA)”

However, Applicants note that the Briant patent teaches that the flexible walls of the receptacle have the *same* properties as the outsole. For example, the Briant patent provides that the flexible wall within the receptacle “is an integral part of the sole.” (Column 2, line 29.) Indeed, in a preferred embodiment of the Briant patent, the complete sole, including all base members and receptacles, is made by injection molding from a single piece of plastic material. (Column 6, lines 27-31.) Thus, the Briant patent actually teaches away from Applicants’ invention, which requires a second material of the outsole that is less hard and less dense than the material of the at least one element, which is compression molded with the outsole. Therefore, unlike the Briant patent, the components of the walls of the receptacle in claim 1, do not have the same properties as the outsole.

For this reason, the obviousness rejection of claims 1 and 3-10 is improper and should be withdrawn.

B. Independent Claim 11 and its Dependent Claims 12-15

Independent claim 11, and its dependent claims 12-15, generally define an article of footwear having an upper and a sole, wherein the sole has an outsole for directly contacting a ground surface, at least one element compression molded with the outsole, and at least one cleat receptacle compression molded with the at least one element and accessible for attachment of a non-metal cleat. The at least one element is formed from a first material comprising at least 45% ethylene vinyl acetate, approximately 30% polyene elastomer, and approximately 20% synthetic rubber. In addition, the outsole includes a second material that is compatible for compression molding with the at least one element. This second material is less hard and less dense than the first material.

As discussed above, the Allen patent fails to disclose or suggest that at least one element is formed from a material comprising ethylene vinyl acetate, and the Briant patent actually teaches away from combination with the Allen patent. For this reason, the obviousness rejection of claims 11-15 is improper and should be withdrawn.

V. **§ 103(a) Rejection of Claims 1, 3-7, and 10 Based on the Allen Patent
In View of the Briant and McKay Patents**

As mentioned above, independent claim 1, and its dependent claims 3-7, and 10, were rejected under 35 U.S.C. § 103(a), as allegedly obvious over the Allen patent, in view of the Briant patent, and in further view of the McKay patent.

As discussed above, the Allen patent fails to disclose or suggest that at least one element is formed from a material comprising ethylene vinyl acetate, and the Briant patent actually teaches away from combination with the Allen patent.

The McKay patent fails to make up for these deficiencies. The McKay patent discloses blends of a specific pseudorandom or substantially random interpolymer of an ethylenic monomer and a vinylidene aromatic monomer, such as styrene, having a unique comonomer distribution, which can only be accomplished by the use of the specific metallocene catalysts and processes disclosed in columns 9-11. Therefore, the McKay patent fails to disclose the claimed blend of ethylene vinyl acetate, polyene elastomer, and synthetic rubber.

For this reason, the obviousness rejection of claims 1, 3-7, and 10 is improper and should be withdrawn.

VI. **§ 103(a) Rejection of Claims 16 and 17 Based on the Allen Patent
In View of the Briant and Safdie Patents**

As mentioned above, dependent claims 16 and 17 were rejected under 35 U.S.C. § 103(a), as allegedly obvious over the Allen patent, in view of the Briant patent, and in further view of the Safdie patent.

Claims 16 and 17 depend from independent claim 11. The Safdie patent fails to disclose or even suggest an element of an article of footwear having the claimed blend of ethylene vinyl acetate, polyene elastomer, and synthetic rubber. Moreover, the Safdie patent fails to disclose or suggest an element of an article of footwear having an electroplated member that is visible on the sole, as required by claim 17. These deficiencies are not cured by the Allen and Briant patents, for the reasons described above.

For this reason, the obviousness rejection of claims 16 and 17 is improper and should be withdrawn.

VII. § 103(a) Rejection of Claim 2 Based on the Allen Patent In View of the Briant, McKay, and Hurley Patents

As mentioned above, claim 2 was rejected under 35 U.S.C. § 103(a), as allegedly obvious over the Allen patent, in view of the Briant patent, in further view of the McKay patent, and in further view of the Hurley patent.

As described above, Applicants have canceled claim 2 in response to the Examiner's rejection under 35 U.S.C. § 112, second paragraph. Therefore, the obviousness rejection of claim 2 is moot.

VIII. § 103(a) Rejection of Claims 8 and 9 Based on the Allen Patent In View of the Briant, McKay, and Safdie Patents

As mentioned above, claims 8 and 9 were rejected under 35 U.S.C. § 103(a), as allegedly obvious over the Allen patent, in view of the Briant patent, in further view of the McKay patent, and in further view of the Safdie patent.

Claims 8 and 9 depend from independent claim 1. The Safdie patent fails to disclose or even suggest an element of an article of footwear having the claimed blend of ethylene vinyl acetate, polyene elastomer, and synthetic rubber. Moreover, the Safdie patent fails to disclose or suggest an element of an article of footwear having an electroplated member that is visible on the sole, as required by claim 9. These deficiencies are not cured by the Allen, Briant, and Mckay patents, for the reasons described above.

For this reason, the obviousness rejection of claims 8 and 9 is improper and should be withdrawn.

IX. Conclusion

The foregoing remarks should place this application in condition for allowance. No new matter has been introduced by the foregoing amendments. If any matters remain outstanding after consideration of this Amendment that the Examiner believes might be

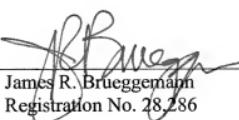
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expedited by a telephone conference with Applicants' representative, he is respectfully requested to call the undersigned attorney at the number indicated below. As indicated in the transmittal form filed herewith, please charge any fees due in connection with this filing to our Deposit Account No. 19-1853.

Respectfully submitted,

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